

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**NATIONAL RIFLE ASSOCIATION OF
AMERICA,**

Plaintiff and Counter-Defendant,

V.

ACKERMAN MCQUEEN, INC.,

Defendant and Counter-Plaintiff,

and

**MERCURY GROUP, INC., HENRY
MARTIN, WILLIAM WINKLER, and
MELANIE MONTGOMERY,**

Defendants.

Case No. 3:19-cv-02074-G

ACKERMAN MCQUEEN’S OBJECTIONS TO THE USE OF DEPOSITIONS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 32(a)

Pursuant to FEDERAL RULES OF CIVIL PROCEDURE 32(a) and 23(a)(3), and the Court’s October 13, 2020 Scheduling Order (ECF 174), as amended, Defendant/Counter-Plaintiff Ackerman McQueen, Inc. (“**AMc**”) and Defendants Mercury Group, Inc. (“**Mercury**”), Henry Martin (“**Martin**”), William Winkler (“**Winkler**”), and Melanie Montgomery (“**Montgomery**”) (collectively, “**AMc**”) hereby submits the following Objections to the NRA’s Use of Depositions:

On February 7, 2022, and pursuant to this Court’s Scheduling Order, the NRA served its *Plaintiff’s Pretrial Disclosure Pursuant to Fed. R. Civ. P. 26(a)(3)(A)(ii)*, which notified AMc that the NRA expects to call certain witnesses by deposition. Specifically, the NRA states that it intends to call: 1) Skye Brewer; 2) Rick Tedrick; 3) Anthony Ferate; 4) Craig Spray; 5) William

Powers; 6) Brandon Winkler; 7) William Winkler; 8) Melanie Montgomery; and 9) Woody Phillips by deposition.

AMc does not object to the following witnesses being called by deposition: Skye Brewer; Rick Tedrick; and Craig Spray, but reserves all rights to challenge any offered testimony from these witnesses. Similarly, with respect to Bill Winkler, Brandon Winkler, Bill Powers, and Melanie Montgomery, these witnesses will be present at the trial, and AMc reserves all rights to object to any testimony offered with respect to these witnesses.

While AMc does not object to the availability of Anthony Ferete under Rule 32(a), it intends to file a motion in limine regarding the admissibility of Mr. Ferete's testimony on numerous other grounds, including relevance. Thus, aside from objections under Rule 32(a), AMc reserves all of its rights with respect to the testimony of Mr. Ferete.

Finally, the NRA contends that it intends to call Woody Phillips by deposition. Under the Federal Rules of Civil Procedure, a deposition may be offered at trial against a party where the following requirements are met: (1) "the party was present or represented at the taking of the deposition or had reasonable notice of it"¹; (2) the offering party uses the deposition only to the extent admissible under the Federal Rules of Evidence "if the deponent were present and testifying"²; and (3) use of the deposition is expressly permitted by another provision of Rule 32(a)(2)-(8).³ One of the expressly permitted uses allows a deposition to be introduced for any purpose where the Court determines that "the witness is more than 100 miles from the place of

¹ FED. R. CIV. P. 32(a)(1)(A).

² *Id.* at 32(a)(1)(B)

³ *Id.* at 32(a)(1)(C).

hearing or trial.”⁴ The Fifth Circuit has recently clarified that the “place of trial” refers to the “courthouse where the trial takes place.”⁵

It is undisputed that Mr. Phillips lives in Dallas, and thus, within 100 miles from the place of trial.⁶ Thus, he is available to testify, and AMc has served a trial subpoena of Mr. Phillip’s counsel. However, unless otherwise prohibited by the Court, AMc has told the NRA that it will also agree to call Mr. Phillips by deposition as well, while reserving all of its rights to call him live at trial if the need arises.

Date: February 22, 2022

Respectfully submitted,

/s/ Brian E. Mason

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⁴ *Id.* at 32(a)(4).

⁵ *Spectrum Ass’n Mgmt. of Tex., L.L.C. v. Lifetime HOA Mgmt. L.L.C.*, 5 F.4th 560, 564-65 (5th Cir. 2021).

⁶ *See* ECF 419-1 at Ex. 29 at 10:16-7) (APP 1944) (“Q: What’s your home address? A. ...Dallas, 75219.”).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on all parties receiving notice by and through the Court's CM/ECF system on February 22, 2022.

/s/ Brian E. Mason

BRIAN E. MASON